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**BEFORE THE**
**UNITED STATES TRADE REPRESENTATIVE**

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| **IN THE MATTER OF:** | ) | Investigation No. TA-201-73 |
| Certain Steel | ) | |

# WRITTEN RESPONSE TO COMMENTS OF THE DOMESTIC PRODUCERS OF SIDERURGICA DEL ORINOCO, C.A. ("SIDOR") REGARDING POTENTIAL ACTION UNDER SECTION 203 OF THE TRADE ACT OF 1974 WITH REGARD TO IMPORTS OF CERTAIN STEEL

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**SIDERURGICA DEL ORINOCO, C.A. ("SIDOR"): USTR REMEDY BRIEF**

## I. INTRODUCTION

Siderurgica del Orinoco, C.A. ("Sidor") respectfully submits the following response to the domestic producers briefs with respect to the Presidential remedy phase of the Steel Section 201 action. Sidor submits this response with respect to each of the following products: (1) slabs, (2) hot-rolled steel, (3) cold-rolled steel, (4) coated (corrosion resistant) steel, (5) rebar, and (6) tin mill. However, rather than repeat the arguments made by Sidor in its January 4th Brief, this response addresses only the domestic producers' comments regarding the developing country exclusion under Article 9.1 of the WTO Agreement on Safeguards, and additional comments regarding the issue of the allocation of country-specific quotas which arose during meetings with USTR/TPSC.

## II. THE PRESIDENT SHOULD GIVE ARTICLE 9.1 OF THE WTO AGREEMENT ON SAFEGUARDS MEANING AND EFFECT

Several domestic producers have argued that the President should not apply the Article 9.1 developing country exclusion in this case. The domestic producers' assertions concerning the developing country import shares are based on results-oriented data selection. Unlike the domestic producers, the President should not have as his objective finding some period out of all the viable periods when developing country imports exceed 9 percent. Rather, the President should make every effort to provide meaning and effect to the exclusion provision of Article 9.1 of the Safeguards Agreement negotiated by the developing countries and agreed to by the United States.

The developing countries negotiated for and the United States and other developed countries agreed to the Article 9.1 provision to effectively exclude small developing country

suppliers from safeguard actions. The negotiating history shows that, without the developing country exception, the developing countries likely would not have agreed to the Safeguards Agreement. Given this, the President should give meaning and effect to the Article 9.1 exclusion provision and should make every effort to exclude developing countries where possible.

## III. THE DOMESTIC PRODUCERS' APPLICATION OF ARTICLE 9.1 IS FLAWED AND SHOULD BE REJECTED

### A. The Domestic Producers Provide No Support For Their Results Oriented Choice Of Period For The Article 9.1 Analysis

The selection of the appropriate time period is critical to the proper application of the developing country exclusion provision under Article 9.1 of the WTO Agreement on Safeguards. Nonetheless, only a few domestic producers commented on which time period the President should use for this analysis. The domestic producers that did comment on the exclusion of developing countries under Article 9.1 make bald assertions with respect to the appropriate time period to use for calculating the developing country shares of total imports. Not one of the domestic producers provides any legitimate rationale for using the period they selected. The domestic producers merely assert that during a given period the total WTO developing country share exceeds 9 percent.[1] Without justification for their choice of time period, it can only be assumed that the domestic producers merely cherry-picked a particular period and combined certain products to be able to come up with a figure that exceeds 9 percent.

Examination of the time periods selected by the domestic producers shows these periods are not appropriate. The period selected by the domestic producers (*i.e.*, January 2000 to

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[1] *See* Dewey Ballentine/Skadden Arps Brief at 40-41; *See* Minimill 201 Coalition (Long Products) Brief at 26.

December 2000)[2] is inappropriate because it is not representative of the prevailing market position of developing countries. The markets for several of the products covered by this investigation have been changed significantly by recent antidumping and countervailing duty orders put in place. For instance, with respect to hot-rolled sheet imports, the preliminary AD/CVD orders in early 2000 covered several developing country WTO members. These countries accounted for over 1.6 million short tons of hot-rolled imports in 2000.[3] In interim 2001, after the preliminary AD orders were in place these same developing countries accounted for less than 90,000 tons.[4] Thus, the 2000 data is not representative of the prevailing market position of developing countries. Using import shares based on a period that is no longer representative of the current market conditions will result in import shares that do not accurately reflect the current and potential market share of developing country imports and will ultimately lead to some countries receiving a "double penalty" (*i.e.*, duties in the AD/CVD case and no developing country exclusion in the 201 investigation).

Sidor has provided the President with numerous justifications for the time period it has recommended. As Sidor explained in its comments, the interim period is the most appropriate period because (1) it satisfies the emphasis of the WTO Appellate Body to focus on the most recent periods, (2) is the most recent part of the period of investigation in which the Commission found injury, and (3) it more accurately reflects changes to the current market conditions that have resulted from recent AD/CVD orders.[5] In light of these persuasive reasons and the absence

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2 *See id.*

3 *See* P.R. at Flat-C-4.

4 *See* P.R. at Flat-C-4.

5 *See* Sidor's January 4, 2002 brief at 7-9, for a complete discussion of the justification for the use of this time period.

of a rationale supporting the domestic producers' proposed period the President should follow the rationale provided by the respondents and use the interim period as the base period for calculating the developing country share of imports.

### B. The Domestic Producers Improperly Combine Products In Calculating The Developing Country Share Of Imports

The domestic producers' claims that developing countries should not be excluded are based on the grouping of certain products together, which results in higher developing country share of imports for the group as a whole. The President should reject this grouping of products, and should determine the developing country share of imports based on a product-by-product basis. A product-by-product approach is the most appropriate method for calculating these import shares and is permitted by the WTO Agreement on Safeguards.

#### 1. The President Should Conduct His Article 9.1 Analysis On A Product-By-Product Basis

Analysis on a product-by-product basis is the most appropriate method because any action taken by the President should be specific to each of the products investigated by the Commission, including within the broader flat products group. Separate remedies for each of the different flat products is necessary to add certainty to the market situation facing U.S. producers, foreign producers, and purchasers and to ensure an effective and fair remedy. A remedy based on all flat products combined would unjustly allow certain foreign producers of certain products an advantage over other foreign producers of other products. Some developing countries do not even produce certain of the flat-rolled products or ship them to the United States; therefore, combining all flat-rolled products together in the analysis would improperly discriminate certain developing countries.

For these reasons, the developing country exclusion analysis should be conducted on a product-by-product basis. A product-by-product analysis with respect to the developing country exclusion also is consistent with the disparity of remedies recommended by the various Commissioners with respect to the different steel products involved in this case. Notably, in its recommendations, the Commission as a whole listed individual remedies for each of the 16 different products on which it voted affirmatively or was evenly divided.

### 2. The WTO Agreement On Safeguards Permits The Article 9.1 Developing Country Analysis To Be Conducted On A Sub-Like Product Basis

During meetings between the developing countries and the TPSC, the question was raised regarding whether the Article 9.1 analysis may be conducted on a sub-like product basis. Article 9.1 of Agreement is an absolute exception to the other provisions of the Agreement. The Appellate Body in Wheat Gluten made this clear. The AB stated: "Article 9.1 is an exception to the general rules set out in the *Agreement on Safeguards* that applies only to developing country Members."[6] Thus, even if Agreement on Safeguards required the President to maintain symmetry between the remedy he prescribes and the Commission's like product injury determinations, the AB interpretation of Article 9.1 makes clear that this requirement would not apply to the Article 9.1 analysis.

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6 *United States – Definitive Safeguard Measures On Imports Of Wheat Gluten From The European Communities*, Report of the Appellate Body, WT/DS166/AB/R (22 December 2000) at 34 n. 26 (emphasis added).

## IV. IF THE PRESIDENT SELECTS A COUNTRY SPECIFIC QUOTA, THE PRESIDENT SHOULD GIVE DEVELOPING COUNTRIES A "FAIR SHARE" OF THE QUOTA ALLOCATIONS

As Sidor stated in its earlier brief, there are numerous reasons why a global quota would be superior to a country-specific quota.[7] Nonetheless, if the President determines that a country specific quota is warranted, he should not prejudice those developing country producers that did not export large volumes in the past. In deciding how to allocate a country specific quota, the President should avoid allocating low quotas to countries that may have had a small supply in one or more years of the representative period. Such a remedy would benefit those with large shipments or even surges during the period the U.S. producers experienced injury and penalize responsible exporters that may have exited the market due to unfavorable conditions. In deciding how to allocate the country-specific quotas, the President should also consider that several of the largest exporters in 2000 are now subject to antidumping duty orders. Based on the fact that most exporters received relatively high dumping margins, producers in these countries are not likely to export significant volumes to the United States in the near future. If a disproportionate share of the quota were to be allocated to the countries covered by the orders, it is likely that significantly lower volumes than what the President expects would be able to enter the country.

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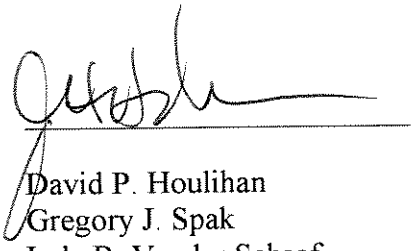
7 *See* Sidor January 4th Brief at 23-24.

## V. CONCLUSION

For those reasons stated above and in Sidor's prior submissions, Sidor respectfully submits that Venezuelan imports of slabs, hot-rolled steel, cold-rolled steel, corrosion resistant steel, and tin mill steel should be excluded under Article 9.1 of the WTO Agreement on Safeguards. Additionally, for the reasons discussed in this brief, if the President determines that a country-specific quota is appropriate, Sidor respectfully requests that he distribute the quota allocations in a manner that does not prejudice those countries which have had historically lower volumes of imports.

Respectfully submitted,



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